



Call for Evidence: Disclosure (Scotland) Bill

August 2019

Children in Scotland is the national network for improving children's lives. Giving all children in Scotland an equal chance to flourish is at the heart of everything we do. By bringing together a network of people working with and for children, alongside children and young people themselves, we offer a broad, balanced and independent voice. We create solutions, provide support and develop positive change across all areas affecting children in Scotland. We do this by listening, gathering evidence, and applying and sharing our learning, while always working to uphold children's rights. Our range of knowledge and expertise means we can provide trusted support on issues as diverse as the people we work with and the varied lives of children and families in Scotland.

Children in Scotland is pleased to be able to respond to the call for evidence on the Disclosure (Scotland) Bill by the Education and Skills Committee. Children in Scotland is interested in the Bill from two perspectives. We believe that the Disclosure system is essential for safeguarding purposes and the Bill will be a key piece of legislation in defining how we support and protect children and young people. The way the system operates also has a key role in the justice system for many children and young people. The Bill will also impact on Children in Scotland in a practical sense as all of our staff are subject to a Disclosure Scotland check.

Our response will be focused on high level issues and will not address the technicalities of the Disclosure (Scotland) Bill. We will focus on the proposed simplifications to the system and also how the proposed new scheme can ensure that experience with the criminal justice system in childhood and adolescence does not disproportionately impact on job opportunities later in life.

General Comments

Children in Scotland is pleased to see thought being given to the Disclosure system to ensure it fulfils its role in safeguarding. However, it is important to remember that this is only one part of safeguarding for vulnerable groups. It is essential that employers working with vulnerable groups have a clear safeguarding system within their organisation that includes, but is not limited to, undertaking disclosure checks. This system must begin before potential employees undergo a disclosure check by confirming identification and following up on all references.

Children in Scotland is pleased to see that a range of engagement work has been carried out with groups who access services that are covered under the Disclosure scheme. It is important that their views are reflected within the system. However, we are disappointed to see there does not appear to have been any direct

engagement with children and young people. This would have provided valuable insight into the views and perspectives of children and young people on what they want from the workforce. We would encourage the Education and Skills Committee to explore findings from our Children and Young People's Evidence Bank for their reports to identify the views of children and young people in this area¹.

Scheme Simplification

Children in Scotland believes that proposed changes to the scheme to simplify the system are welcome. We agree that the current system can be too complex and can cause confusion around what prior issues may appear on a disclosure check.

Partners across the children's sector such as Clan Childlaw have highlighted in previous consultations on changes to the Disclosure system that the present system makes it very hard to explain to children and young people involved in Children's Hearings what the impact of behaviour may be on a PVG or Disclosure check in the future, and the impact this may have on their employment. Simplification of the system to clarify what information can be passed on about a child or young person (and what offences will be considered) will help to rectify this issue.

We also agree with the assessment made by CELCIS that reforms to the system in and of themselves will not go far enough. More must be done to support children and young people to understand the system and employers to understand the changes. We would refer the committee to CELCIS's response to the pre-legislative consultation for further information.

Children in Scotland believes that replacing the current definition of 'doing regulated work' with a list of core activities or 'regulated roles' is helpful. This will allow employers in sectors that do not work with vulnerable groups as part of their core work to understand when a disclosure or PVG is required.

We also agree with the assessment from the Scottish Children's Reporter Association and the NSPCC in the pre-legislative consultation that making the Disclosure scheme mandatory for all carrying out 'regulated roles' is an appropriate change that will support the safeguarding of children and young people. In their response to the pre-legislative consultation the NSPCC also provided a list of roles that should be considered as 'regulated work'. We believe this list presents a valuable starting point from which the new Disclosure system should work. We appreciate it may not be possible to prepare an exhaustive list of 'regulated roles' and it is therefore important that clear guidance is provided to employers and potential employees about what other roles may fall under this list.

In response to the pre-legislative consultation the Scottish Children's Reporter Association highlighted that they would like to see the Disclosure system underpinned by a set of principles. We would be interested to see how such a system would work and would encourage consideration of this as the Disclosure (Scotland) Bill passes through the Scottish Parliament.

Children in Scotland is a member of the Independent Care Review workforce strand. As part of this strand of work the importance of relationships has been identified, as has the need for a value-based workforce in the children's sector. Consideration of a widely implemented values-based recruitment framework could be helpful for assessing whether people are suitable to work with children and young people, and

¹ <https://evidencebank.org.uk/>

indeed other vulnerable groups. An example of this could be the SSSC 'Right values, right people: recruitment toolkit'

We also agree with the proposals to maintain free disclosure checks for volunteers from qualifying voluntary organisations. Volunteers are a vital part of the workforce in the children and young people's sector and must be supported to continue to engage in volunteering with no financial restrictions in this area.

Criminal Record Checks

Children in Scotland agrees with partners across the sector who have clearly and consistently argued for the need to ensure that the disclosure system does not disproportionately disadvantage children and young people who have been involved in childhood offending. The current system makes it difficult for people with a conviction in childhood or adolescence to gain employment with vulnerable groups, despite the fact that offences may not be reflective of current behaviour. Children in Scotland believes it is unjust for minor offences in childhood to continue to have a long-term effect on the life changes and opportunities in adulthood. We are pleased to see that the Disclosure (Scotland) Bill aims to take steps to rectify this.

Evidence clearly shows that childhood offending is socially patterned. As CELCIS argued in their response to the pre-legislative consultation, care experienced young people are more likely to be formally involved with the police and have behaviour recorded in relation to this. They are also more likely to be criminalised than their peers²³. Evidence has also shown that children and young people living in residential care are also more likely to receive a criminal record for minor issues⁴.

We agree with the assessment of partners across the sector that childhood offending must be treated as distinct from adult offending. As the brain develops through childhood and adolescence, children and young people can be more prone to risk taking behaviour, while having less capacity to assess such risk⁵. A recent paper by Augusberger and Elbert highlights a range of reviews that have shown that exposure to trauma can be connected to increased levels of risk taking⁶. It is important to have a wider system that supports children and young people to manage and regulate this behaviour rather than a justice and disclosure system that punishes them disproportionately for it.

The Disclosure system must reflect this and as such we are pleased to see that the Disclosure (Scotland) Bill proposes to exclude offences committed between 12-17 from disclosure records except in specific cases. We are pleased that this takes account of the recent increase to the age of criminal responsibility as laid out in the Age of Criminal Responsibility (Scotland) Bill. We agree with the assessment of partners such as Clan Childlaw that these changes will emphasise the best interests of the child and align the system more closely with the Children's Hearing system. We would also encourage the Scottish Government to give deeper consideration to suggestions by CELCIS that convictions up till the age of 25 should be considered for a 5-year period before applications can be made to have these discounted. CELCIS has argued that brain development continues further into the twenties and as such people may still engage in risk taking behaviour that could end up on their record⁷.

² <https://www2.gov.scot/Resource/0049/00497071.pdf>

³ The Howard League of Penal Reform, 2016, *Criminal Care*

⁴ <https://cyci.org.uk/wp-content/uploads/2016/10/Responses-to-Offending-in-Residential-Childcare.pdf>

⁵ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3445337/>

⁶ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5428957/>

⁷ <https://cyci.org.uk/wp-content/uploads/2017/03/Extending-the-Whole-System-Approach-1.pdf>

Children in Scotland does not have a firm position on reducing the application time for removing convictions up to the age of 25 but believes it is worthy of consideration as the Bill passes through Parliament.

It is worth identifying here that Children in Scotland is supportive of increasing the age of criminal responsibility to at least 14 and believes consideration should be given to raising this to 16. This would have implications for proposals within the Disclosure (Scotland) Bill. This should be considered as the Bill is passing through the Scottish Parliament.

Children in Scotland believes that there are certain instances where it will be clear and obvious that there is a public safety issue related to previous offending and where this must be disclosed. We believe a proportional system should be used to define what sorts of offences may need to be passed on employers. A clear risk assessment process should be used that allows a decision to be made on a case by case basis.

It is also worth highlighting that employers currently have responsibilities to potential employees under The Police Act 1997 in relation to the recruitment of ex-offenders. Changes to the system for disclosure checks and the information that can be passed on from this should not impact on the action taken by employers to ensure that ex-offenders feel comfortable applying to a role and understand the process that will be taken to ensure their suitability for it.

We also agree with the assessments of partners across the sector in relation to the provision of "Other Relevant Information" (ORI's). The ORI system allows the police to provide information to employers that identifies behaviour that may influence an employer's view on the employability of a candidate.

We have concerns that the provision of ORI on these grounds could undermine the new system of discounting convictions between the age of 12-17. Provision of ORI could allow employers to access information that relates to convictions without giving access to the convictions themselves. Similarly, to discount convictions between the age of 12-17 we believe that ORI's should only be granted in situations that relate to public protections. We agree with Clan Childlaw's assessment that a high threshold should be set and risk assessments should be used to identify when it is appropriate to pass on information. We also share concerns raised by CELCIS that information about engagement with the police that could not result in criminal prosecution due to the increased age of criminal responsibility could be passed on by ORI. This is not in keeping with the Scottish Government's proposed approach to youth criminal justice.

We are pleased that the proposals contained within the Disclosure (Scotland) Bill will give applicants the right to make representations to the police about the provision of ORI's. However, we believe this could go further to entirely restrict the provision of ORI's except in a case of public protection based on a risk assessment. Such a system would be more in keeping with the rights-based approach to youth justice that the Scottish Government has articulated a commitment to.

Amy Woodhouse, Head of Policy, Projects and Participation